

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

Notice of Proposed Rulemaking)	
)	
In the Matter of)	WC Docket No. 17-192
)	
Toll Free Assignment Modernization)	CC Docket No. 95-155
)	
Toll Free Service Access Codes)	
)	

COMMENTS OF TEN DIGIT COMMUNICATIONS LLC

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INTRODUCTION AND EXECUTIVE SUMMARY

TEN DIGIT Communications LLC (“TEN DIGIT”) is a nationwide provider of landline and toll-free texting services to businesses with a primary customer focus on contact centers. Formed in 2013, TEN DIGIT continues to provide the services in the competitive landline and toll-free texting marketplace.¹ TEN DIGIT has developed a patented multimedia messaging service (“MMS”) platform to provide cost effective, innovative and transformational communications solutions for contact centers and enterprise customers (using existing landline and toll-free numbers), resulting in improved customer and agent satisfaction as well as substantial efficiency gains.

TEN DIGIT respectfully submits brief comments in support of the Federal Communications Commission’s (“Commission’s”) request in the aforementioned proceeding (“Notice”).²

While future distribution mechanisms of toll-free numbers to the industry for public consumption is the primary focus of the Notice, TEN DIGIT is ambivalent on the distribution of toll-free numbers via auction. TEN DIGIT supports an industry consensus solution.

TEN DIGIT, however, questions whether or not the public is adequately served by the current Toll Free Number Administrator (“TFNA”), Somos, Inc. (“Somos”), equitably, in a competitively neutral, and cost-effective manner. Further, TEN DIGIT argues that the Somos’

¹ See www.tendigitcommunications.com

² FCC 17-124, NPRM, In the Matter of Toll Free Assignment Modernization Toll Free Access Codes, WC Docket No. 17-192, September 28, 2017.

tariff does not provide for associated toll-free services at just, reasonable and non-discriminatory rates.³

On October 28, 2016, Somos petitioned the Commission for a declaratory ruling that any provider of texting services to toll-free numbers may not do so without the explicit authority of the Responsible Organization (“Resp Org”) with assignment and routing authority for that toll-free number.⁴ In its comments in that docket, TEN DIGIT not only provided substantive evidence that the toll-free texting market did not need the registry for which Somos advocates but, further, TEN DIGIT explicitly pointed out that Somos was in a unique position for collecting monopoly rent from a captive industry to include fees for registering to enable toll-free numbers for texting. TEN DIGIT noted that “[f]or twenty-three years this not-for-profit has built a monopoly in the provision of toll-free number and query services. Somos still relies on antiquated technology and continues to leverage its filed rate doctrine power to assess unreasonably high rates for services.”⁵

Somos claims to have “modernized” their market presence by creating a Board of Directors composed of members more representative of the industry. They have posted a slick new website online and changed their corporate name. But, from a regulatory and technological perspective, Somos still remains in a dour, pre-Telecommunications Act, circuit switched world in order to retain its stranglehold on the toll-free marketplace. TEN DIGIT applauds the Commission for opening a proceeding to investigate why the pricing for toll-free database and administrative query services provided by Somos to the industry continues to increase.

³ FCC 17-124, paras. 42-44.

⁴ Petition of Somos, Inc. for a Declaratory Ruling Regarding Registration of Text-Enabled Toll-Free Numbers, CC Docket 95-155, October 28, 2016 and White Paper, *Texting with Toll-Free Numbers*, September 29, 2016.

⁵ TEN DIGIT Comments, Petition of Somos, Inc. for a Declaratory Ruling Regarding Registration of Text-Enabled Toll-Free Numbers, CC Docket 95-155, December 2, 2016.

Somos, the monopoly provider of toll-free number administration, has hidden behind a tariff and siphoned money from the industry ever strengthening and extending its chokehold on toll-free services. As Somos enjoys both their privileged position and an effective lock on the toll-free database and associated record and administration queries, the toll-free marketplace remains both moribund and needlessly expensive.

There are fine examples of the good that can happen in a marketplace when regulation is relaxed and monopoly chains are broken. The rapid decline in local number portability (“LNP”), signaling system seven (“SS7”), and toll-free query rates when those markets were deregulated several years ago are illustrative. The recent shift from Neustar to Telcordia d/b/a iconectiv as the LNP administrator via competitive bid leads one to question why Somos’ provision of its database services is not open to the same competitive process.

For these reasons, as TEN DIGIT will expand in further detail in these comments, the Commission should not only review the process by which the rates per toll-free number are calculated but should review relevant income statements, balance sheets, bank statements, and any potential excess that may reside on Somos’ balance sheet which may be counter to not-for-profit rules. Further, we support the deregulation and detariffing of Somos and any entity that might succeed them. As with other similar services the Commission oversees, the services that Somos currently provides should be subject to an open and public competitive bid and, as a result, the administration of the toll-free number database should be managed by an entity with a laser-like focus on neutrality, efficiency and attention to cost control.

SOMOS, INC.’S MONOPOLY ON TOLL-FREE SERVICES

The communications industry has benefitted greatly from the deregulation of LNP, SS7

and toll-free query services formerly provided in some manner by the Regional Bell Operating Companies (“RBOCs”). Together, these examples are proof that database services have been, and can be, migrated to modern, efficient IT platforms accessed by advanced Internet Protocol techniques priced by a competitive market structure.

In 1993, the Commission mandated that the RBOCs develop a centralized database system to allow toll-free customers to change their service providers without having to change their numbers. The Commission also required the RBOCs to offer the service as a common carrier service, under tariff, to ensure that they offer it on a non-discriminatory basis and at reasonable rates. In response, the RBOCs created SMS 800, Inc. which has recently renamed itself Somos, Inc. The industry pays for access to the database through the rates, terms and conditions of the Somos’ SMS/800 tariff.⁶ The tariff not only sets forth the regulations and rates applicable to Somos services but also establishes Resp Org and Service Control Point (“SCP”) responsibilities and eligibility criteria.⁷ No doubt a single database for toll-free numbers is a necessity for many obvious operational reasons. However, there is absolutely no reason the database management cannot be opened up for competitive bid. As we have seen with the the other industry databases, the Commission sees value in competition in those communications database services.

For years now, Somos has maintained a federal tariff. That document currently provides for a monthly recurring charge to Resp Orgs at the rate of \$.1094 per toll-free number for customer record administration (“CRA”). In point of fact, that number is an increase over the rate published in Somos’ federal tariff in 2016 and has remained at a similar level for over seven years.⁸ Somos

⁶ See <https://s3.amazonaws.com/files-prod.somos.com/documents/SMS800FunctionsTariff.pdf>

⁷ SCPs ensure industry connectivity to the SMS/800 database by providing trunking and signaling functions.

⁸ The 2016 CRA rate was \$.0094 per toll-free number per month. This represented an increase over 2015’s rate as well.

will point to data showing that the customer record administration rate has declined by over one third since the tariff's inception. However, there were significantly fewer toll-free numbers in service in 1993. Reducing the rate on an ever growing number of units billed is a common monopoly sleight of hand.

Any Commission review of Somos' finances should pose some basic economic questions. What is the marginal cost of adding or enabling one more toll-free number to the existing database? How much additional server or network capacity does Somos need when it is granted permission to open a new toll-free code? Neither of these questions can be answered without understanding Somos' internal finances and in the context of Somos' status as a not-for-profit provider. TEN DIGIT suspects that Somos has done little to invest in capital improvements to reduce costs or in any salary or general administrative expense reductions.

Somos states that over 40 million toll-free numbers are in service. This translates to almost \$4 million in monthly revenue and almost \$44 million in revenue annually not including other monthly recurring and non-recurring charges specified in the tariff. For what? Maintaining a database? As anyone with even rudimentary knowledge of information technology and advanced information services will tell you, a virtual database with access to providers via internet protocol technology would be infinitely cheaper and would have the happy result of driving down the usurious rates toll-free consumers pay as provider's pass-through these Somos costs directly to the end-users. Further, in a highly competitive IT hardware and software market, one would expect Somos' capital expenditures to benefit accordingly. One wonders whether Somos will notify the Commission of a reduction in rates in their tariff when it files revisions in the upcoming year.⁹

⁹ It was only in the past few months that Somos upgraded access to the SMS/800 via application programming interface ("API") and a web based user interface ("UI"). These interfaces are quite common and have been instrumental in the telecommunications and information services spaces for many years. Will this effort result in

TEN DIGIT challenges any claim that any telecommunications or information services company operating in 2017, that is not protected by its monopoly status or the filed rate doctrine, has increased costs of doing business. The advent of cloud services connected by high capacity IP bandwidth has both conspired to drive down provider server and network costs dramatically.

On September 19, 2017, Somos filed an ex parte with the Commission memorializing a series of meetings with the Commission staff on September 15 and September 18, 2017.¹⁰ In those meetings, Somos pointed out that paragraphs 42 and 43 of the Notice were unnecessary. Somos explained that there is “widespread satisfaction in the toll-free community with the current structure” and “[t]hat those paragraphs are procedurally improper and unnecessary, and Somos would encourage that they be removed before the [Notice] is released.” TEN DIGIT is unaware of any studies related to the “widespread satisfaction” of the toll-free community with toll-free services particularly with regard to the providers or Resp Orgs who are being billed at a continuously increasing MRC per number obtained.

If the Commission did indeed go ahead and publish the paragraphs of concern in the Notice, which it did, Somos requested that the Commission not further investigate its operations and budget because “detailed financial information is submitted to the Commission each year to support proposed tariff filings. Although much of that information is part of the public tariff filing, some of it is provided to the Commission under confidential cover.” Somos goes on to argue that the Commission’s preliminary conclusion that Somos’ financials are not transparent “is not correct.” The obvious question that comes to mind is that if the Commission were satisfied with

material efficiency gains? <https://www.somos.com/blog/sms800-tfn-registry-updates-include-new-user-interface-and-first-set-apis>

¹⁰ Somos, Inc., Ex Parte, WC Docket 17-192, CC Docket 95-155, September 19, 2017.

the company's financial transparency, why would it ask that question? The Commission has access to the financials protected by confidential cover yet it appears to remain in the dark. TEN DIGIT argues that if Somos is comfortable with its operating costs and pricing methods, it should not be at all protective of revealing them to the industry or, at very least, in explicit detail to the Commission so that they may be judged by a neutral eye.

Somos then goes on to make the rather strange assertion that “while it is correct that in connection with the SMS service Somos ‘is only allowed to recover operating costs,’ such requirement is separate and apart from Somos' corporate structure as a nonprofit corporation. To be sure, the Commission's rules require that the rates charged under the tariff be based on the cost of providing the SMS service, and Somos adheres to that requirement. It is also correct, as the Commission recognized in 2013, that the changes to Somos' membership and Board of Directors created corporate efficiencies that benefited SMS/800 users.”

TEN DIGIT is struggling to understand what these statements mean. Is Somos claiming that its operating costs are subject to strict scrutiny because they are recovered by rates, terms and conditions specified via tariff but that other operating costs, i.e., salary and general expenses related to their corporate structure, are separate and distinct? Any for profit entity, or not-for-profit entity for that matter, has as its primary costs salaries and general expenses. What about Somos' corporate structure is exempt from Commission regulation of the services and tariffed cost recovery?

Further, how did changes to Somos' membership and its Board of Directors create corporate efficiencies that benefited those in the industry that use the SMS/800 platform? Since 2013, the basic rate for the services has increased and there have been relatively few changes in

the means by which toll-free numbers are obtained and query services are performed. TEN DIGIT would be interested in learning which efficiencies it and its customers realized as the Somos executive team and Board of Directors expanded.

A COMPARATIVE LOOK

On its website Somos presents quite a bit of information regarding its management team, its Board of Directors, and its Advisory Council.¹¹ By its own admission, Somos, Inc. has 27 different individuals serving on those three organizations. While there is limited public information available regarding salaries or other compensation provided to these individuals, if at all, the number of people involved with managing or otherwise influencing a rather basic database and related query services seems excessive. As a comparison, Telcordia d/b/a iconectiv, the local number portability administrator (“LNPA”), is a much larger entity with many other corporate functions and it maintains a similarly sized executive team and Board of Directors.¹² Neustar, Inc., the North American Numbering Plan Administrator (“NANPA”), also a much larger entity with approximately \$1 billion in annual revenues among its various subsidiaries, also maintains a similarly sized executive team and Board of Directors.¹³

Somos appears to have taken on the burden of marketing new, more creative uses of toll-free numbers.¹⁴ While TEN DIGIT applauds this effort, we believe that the industry itself is quite capable of marketing and selling its goods and services to the telecommunications and information

¹¹ <https://www.somos.com/about-us>

¹² <https://www.iconectiv.com/company/leadership-team>

¹³ <https://www.neustar.biz/about-us/leadership> and <https://www.sec.gov/Archives/edgar/data/1265888/000126588816000073/exhibit991june212016.htm> (the Board of Directors information is as of June 2016.)

¹⁴ <https://www.somos.com/toolkit>

services competitive market. It is strange that the TFNA feels it necessary to do anything but manage the toll-free database and associated network to support query services. The industry has neither requested nor needs Somos to do anything else. Somos freely advertises its marketing expertise. Proud pronouncements of periodic conferences, award ceremonies, or other superfluous events dot Somos' website.¹⁵ Do such seemingly unnecessary forums result in the increase in any rates paid by toll-free providers for database services? The Commission is well within its bounds to investigate and ensure that indeed Somos has provided the "corporate efficiencies" that benefit the industry as it claims.

CONCLUSION

Somos, Inc. bears the burden of demonstrating their financials are not only managed to ensure that toll-free database and query services give the industry the most bang for the buck but that their privileged position as the TFNA is not being abused under the alleged protection of a tariff. In order to shed light on this, the Commission is well within its authority to scrutinize in far more detail Somos' continued monopoly provision of toll-free database services. The Commission should not only review the process by which the rates per toll-free number are calculated but should review relevant financial data to root out any potential excess that may reside on Somos' balance sheet which may be counter to not-for-profit rules. As with other similar services the Commission oversees, the services that Somos currently provides should be subject

¹⁵ <https://www.somos.com/events> . Somos advertised an event entitled "Continuing the Modernization Journey: SMS/800 Toll-Free Number Registry Roadshow." This event was held at the Shutters on the Beach Hotel in Santa Monica, CA. <https://www.shuttersonthebeach.com> . TEN DIGIT hopes the toll-free industry is not paying for any of this.

to an open and public competitive bid so as to provide the most efficient, cost-effective toll-free database to the industry. Further, we support the deregulation and detariffing of Somos and any entity that may succeed them after the competitive bid process is completed.

Respectfully submitted,

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